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Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002 GENERAL RELOCATION REQUIREMENTS

002.01 PURPOSE. This section prescribes general requirements governing the provision of relocation payments and other relocation assistance in this rule.

002.02 APPLICABILITY. These requirements apply to the relocation of any displaced person as defined in Section 001.02G.

002.03 RELOCATION NOTICES.

002.03A GENERAL INFORMATION NOTICE. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

002.03A1 Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

002.03A2 Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

002.03A3 Informs the person that he or she will not be required to move without at least 90 days advance written notice (see Section 002.03C), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

002.03A4 Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this rule.

002.03B NOTICE OF RELOCATION ELIGIBILITY. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Section 001.02K) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

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002.03C NINETY-DAY NOTICE.

002.03C1 GENERAL. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

002.03C2 TIMING OF NOTICE. The displacing Agency may issue the notice 90 days before it expects the person to be displaced or earlier.

002.03C3 CONTENT OF NOTICE. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. A 90-day notice will not be issued to a residential occupant until a comparable replacement dwelling is available. (See Section 002.04A.)

002.03C4 URGENT NEED. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the persons continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

002.04 AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT.

002.04A GENERAL. No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined in Section 001.02D) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

002.04A1 The person is informed of its location; and

002.04A2 The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

002.04A3 Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

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002.04B CIRCUMSTANCES PERMITTING WAIVER. The Agency head may grant a waiver of the policy in Section 002.04A in any case where it is demonstrated that a person must move because of:

002.04B1 A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

002.04B2 A presidentially declared national emergency; or

002.04B3 Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

002.04C BASIC CONDITIONS OF EMERGENCY MOVE. Whenever a person is required to relocate for a temporary period because of an emergency as described in Section 002.04B, the Agency shall:

002.04C1 Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and

002.04C2 Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

002.04C3 Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

002.05 RELOCATION PLANNING, ADVISORY SERVICES, AND COORDINATION.

002.05A RELOCATION PLANNING. During the early stages of development, programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

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002.05A1 An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

002.05A2 An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

002.05A3 An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

002.05A4 Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating agencies.

002.05B RELOCATION ASSISTANCE ADVISORY SERVICES.

002.05B1 GENERAL. The Agency shall carry out a relocation assistance advisory program for all persons displaced by the Agency. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

002.05B2 SERVICES TO BE PROVIDED. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

002.05B2a Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

002.05B2b Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Section 002.04A.

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002.05B2b(1) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Sections 004.03A and 004.03B) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

002.05B2b(2) Where feasible, housing shall be inspected by the Agency prior to being made available to assure that it meets applicable standards. (See Sections 001.02D and 001.02F.) If such an inspection has not been made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

002.05B2b(3) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, *that are within their financial means.* This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

002.05B2b(4) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

002.05B2c Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

002.05B2d Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

002.05B2e Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

002.05B2f Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is

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needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

002.05C COORDINATION OF RELOCATION ACTIVITIES. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

002.06 EVICTION FOR CAUSE. Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this rule unless the Agency determines that:

002.06A The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

002.06B The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

002.06C In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this rule.

002.06D For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

002.07 GENERAL REQUIREMENTS - CLAIMS FOR RELOCATION PAYMENTS.

002.07A DOCUMENTATION. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

002.07B EXPEDITIOUS PAYMENTS. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentations to support the claim.

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002.07C ADVANCE PAYMENTS. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

002.07D TIME FOR FILING.

002.07D1 All claims for a relocation payment shall be filed with the Agency within 18 months after:

002.07D1a For tenants, the date of displacement;

002.07D1b For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

002.07D2 This time period shall be waived by the Agency for good cause.

002.07E MULTIPLE OCCUPANTS OF ONE DISPLACEMENT DWELLING. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

002.07F DEDUCTIONS FROM RELOCATION PAYMENTS. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, an Agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Section 002.04. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

002.07G NOTICE OF DENIAL OF CLAIM. If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

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002.08 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME. No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the states tax law or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under any other state law, except for any law providing low-income housing assistance.

ANNOTATION

Title 410
Chapter 5
Section 002

Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.